

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROGER O. SMITH,

Plaintiff,

v.

CASE NO. 19-3146-SAC

ARAMARK, et al.,

Defendants.

ORDER OF DISMISSAL

This matter is a civil rights action filed under 42 U.S.C. § 1983 by a prisoner in state custody. On September 6, 2019, the Court entered a Notice and Order to Show Cause (NOSC) directing plaintiff to show cause on or before October 9, 2019, why this matter should not be dismissed and allowing him to file an amended complaint within the time allowed to show cause.

Plaintiff has failed to respond to the NOSC. The Court notes that plaintiff filed a change of address on October 17, 2019, reflecting his transfer between state correctional facilities. However, because records maintained by the Kansas Department of Corrections¹ show that plaintiff's transfer occurred on October 10, 2019, it appears that the September 6, 2019, NOSC was sent to the correct address.

Rule 41(b) of the Federal Rules of Civil Procedure "authorizes a district court, upon a defendant's motion, to order the dismissal of an action for failure to prosecute or for failure to comply with the Federal Rules of Civil Procedure or 'a court order.'" *Young v. U.S.*, 316 F. App'x 764, 771 (10th Cir. 2009) (citing Fed. R. Civ.

¹ <https://kdocrepositary.doc.ks.gov/kasper/search/detail?kdocNumber=50867>

P. 41(b)). "This rule has been interpreted as permitting district courts to dismiss actions *sua sponte* when one of these conditions is met." *Id.* (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)).

The Court has considered the record and concludes this matter must be dismissed for failure to state a claim for relief for the reasons set forth in the NOSC.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed for failure to state a claim for relief.

IT IS SO ORDERED.

DATED: This 27th day of November, 2019, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge